IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1037

CASSIUS L. PEACOCK, JR., *Petitioner*

v.

RETAIL CREDIT COMPANY, *Respondent*

PETITION FOR REHEARING OF ORDER DENYING CERTIORARI

Petitioner, Cassius L. Peacock, Jr., respectfully requests that this Court grant rehearing of its order dated and entered March 1, 1971, which denied certiorari, and that the Court now grant certiorari.

The petition for certiorari previously filed herein presented the following questions:

1. Whether the Court of Appeals and the District Court misapprehended the Georgia law of invasion of privacy and misapplied the *Erie* Doctrine and erred

in holding that the publication of false defamatory credit reports did not constitute an invasion of Petitioner's common law and constitutional right of privacy.

2. Whether the Court of Appeals and the District Court misapprehended the Georgia law pertaining to suspension of the statute of limitations by active concealment and liability for republication and erred in holding that Petitioner's cause of action for libel was barred by the statute of limitations.

3. Whether the Court of Appeals and the District Court erred in completely overlooking the fact that, irrespective of Petitioner's right to recover money damages, he is entitled to equitable relief in the form of a retraction or correction of the false defamatory credit reports and an injunction against further publication and republication of said false reports.

4. Whether the Court of Appeals and the District Court erred in denying discovery and whether such refusal to permit discovery is in direct conflict with *Hickman* v. *Taylor*, 329 U.S. 495, 67 S.Ct. 385, 392, 91 L.Ed. 451 (1947), and denies Petitioner his right to equal protection under the law and constitutes a denial of procedural due process under the Constitution of the State of Georgia of 1945 and the Constitution of the United States of America.

5. Whether the Court of Appeals and the District Court erred in holding that it was immaterial as to where publication of the defamatory reports occurred and in refusing to apply the *lex loci delicti* on issues of substantive law in direct contravention of the rule laid down in *Klaxon Co.* v. *Stentor Electric Mfg. Co.*, 313 U.S. 487, 61 S.Ct. 1020, 85 L.Ed. 1477.

For the reasons stated in the petition for a writ of certiorari, and in view of prior decisions of this Court, counsel for petitioner is convinced that this case should be of compelling interest to the Court and warrants the grant of certiorari. This is more than the ordinary libel case. The Petitioner has demonstrated a clear invasion of his common law and constitutional right to privacy that falls within the ambit of such cases as *Griswold* v. *State of Connecticut*, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965). In the Bibliography contained in the Appendix to the petition for a writ of certiorari, Petitioner called the Court's attention to numerous Congressional reports, law review articles, magazine articles, newspaper articles and speeches which illustrate the gravity of the problem of unwarranted invasion of privacy by credit reporting companies; the permanent storage of false derogatory information in computers; and the great public concern over such continuing invasion of privacy (See pages A-24, A-25, A-26, A-27 and A-28 of the petition for a writ of certiorari).

Petitioner has also shown unreasonable denial of discovery and the consideration of secret *in camera* evidence, all of which flies in the face of *Hickman* v. *Taylor*, 329 U.S. 495, 67 S.Ct. 385, 392, 91 L.Ed. 451 (1947). He has further shown a refusal to apply the well-established principle of law that concealment of a cause of action tolls the statute of limitations, as was held in *Trace* v. *Clews*, 115 U.S. 528, 6 S.Ct. 155, 29 L.Ed. 467, 469; and *Rosenthal* v. *Walker*, 111 U.S. 185, 4 S.Ct. 382, 28 L.Ed. 395. Petitioner has also shown that, after being advised of the falsity of the defamatory statements contained in the credit reports, Retail Credit Company has refused to retract

or correct same (Record pp. 92, 169). Finally, he has shown a misapprehension of the District Court and Court of Appeals as to substantive state law on several important issues, contrary to *Erie R. Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938); and *Klaxon Co. v. Stentor Electric Mfg. Co.*, 313 U.S. 487, 61 S.Ct. 1020, 85 L.Ed. 1477.

FIRST GROUND FOR REHEARING

In view of all of the compelling reasons in the record why this Court should grant a writ of certiorari in this case, it has occurred to counsel that the denial of certiorari was based upon a fact *dehors* the record and not briefed by either party—i.e., this Court felt that the enactment of the Fair Credit Reporting Act, Title VI, Sections 601 through 622 of Public Law 91-508, 84 Stat. 114, on October 23, 1970 (subsequent to the decision of the Court of Appeals), provided Petitioner with an adequate remedy without intervention by this Court. However, a reading of this Act (which under § 602 becomes effective on April 21, 1971), clearly demonstrates that Petitioner does not have an adequate remedy.

First, there is some question as to whether a general contractor is a "consumer" within the meaning of the Fair Credit Reporting Act.

Secondly, the false libelous statements will never be deleted from future credit reports as provided by § 605(a) of Public Law 91-508, since Petitioner customarily has credit transactions in excess of $50,000.00 and thus falls within the exception provided by § 605(b) of said Act.

Thirdly, under § 609(3)(b) of the Act, disclosure of the identity of recipients of "consumer reports"

for purposes other than employment, is limited to six-months, which would not afford relief to Petitioner in this case where reports were made to surety companies, insurance companies, banks and other financial companies more than six months prior to the effective date of the Act. Under § 611 of the Act, retraction or correction of false information is similarly limited to a six-month period.

Finally, § 618 of the Act contains a statute of limitations that might bar any new suit brought by Petitioner.

Pertinent provisions of the Fair Credit Reporting Act, Title VI, Sections 601 through 622 of Public Law 91-508, 84 Stat. 114, enacted October 23, 1970 and effective April 21, 1971, are set out in the Appendix hereto.

Petitioner respectfully submits that the Fair Credit Reporting Act does not afford him an effective remedy and should not be considered as a reason for denying certiorari. However, if the Court feels that said Act does afford Petitioner relief, it would appear that the Court should grant certiorari and then remand the case to the Court of Appeals for determination of Petitioner's remedies under the Act.

SECOND GROUND FOR REHEARING

Since the petition for a writ of certiorari was filed in the present case, a petition for a writ of certiorari has been filed in this Court as *Atwell* v. *Retail Credit Company*, Case No. 1290 in the Supreme Court of the United States, docketed February 1, 1971, noted at 39 L.W. 3337, and reported below as 431 F.2d 1008 (4th Cir. 1970). The *Atwell* case also involves the

issue as to whether concealment tolls the statute of limitations for libel. Thus, the Court might well find it advantageous to consider both cases together.

CONCLUSION

In recent years, the Courts have done much to afford relief to the oppressed, particularly those who by reason of poverty, broken homes or minority status are deemed least able to protect themselves. The Petitioner is not such a disadvantaged person. He is a law-abiding, God-fearing, successful taxpaying citizen. However, he is nonetheless among the oppressed of a modern society in which snoopers for pay are trying to destroy the last vestiges of the individual's right to privacy.

In this case, a scandalous intentional invasion of Petitioner's privacy for profit has resulted in a monstrous libel which has destroyed the only thing in this world that a man can hold sacred, i.e., his reputation.

The courts below who have heard this case do not deny that Petitioner has been irreparably injured and damaged. The response of the lower courts is that there is no remedy. Petitioner brings this petition for rehearing to call to the Court's attention that he, and possibly thousands of other middle-class Americans, have sustained irreparable injury and damage to their personal and business reputations by virtue of the secret and clandestine dossiers compiled and maintained by Retail Credit Company and other similar companies. The basic law of a viable democracy is that where there is a wrong there must be a remedy. This is a maxim of law that began with the earliest recorded cases under common law. If this be true, then the rights of the mainstream American citizens

must be protected from secret and malicious accumulation of false information.

For the reasons set forth in this petition for rehearing, as well as in the petition for a writ of certiorari previously filed, rehearing and certiorari should now be granted.

Respectfully submitted,

C. JAMES JESSEE, JR.
C. James Jessee, Jr.
SWANN, MCLAIN & JESSEE
3242 First National Bank Tower
Atlanta, Georgia 30303
Attorneys for Petitioner

Certificate of Counsel

Pursuant to Rule 38, I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and is restricted to the grounds specified in Paragraph 2 of Rule 38.

This 26th day of March, 1971.

C. JAMES JESSEE, JR.
C. James Jessee, Jr.
Attorney for Petitioner

Certificate of Service

I, C. James Jessee, Jr., Attorney for Petitioner, Cassius L. Peacock, Jr., hereby certify that I have this day served the required number of copies of the foregoing Petition for Rehearing upon Allen W. Post and Hugh M. Dorsey, Jr., Hansel, Post, Brandon & Dorsey, 3300 First National Bank Tower, Atlanta, Georgia 30303, Attorneys for Respondent, Retail Credit Company, by depositing the same in the United States Mail, first-class postage prepaid.

This 26th day of March, 1971.

C. JAMES JESSEE, JR.
C. James Jessee, Jr.
Attorney for Petitioner

APPENDIX

Pertinent Provisions of the Fair Credit Reporting Act, Title VI, Sections 601 through 622 of Public Law 91-508, 84 Stat. 114, enacted October 23, 1970 and effective April 24, 1971, are as follows:

"§ 605. Obsolete information

"(a) Except as authorized under subsection (b), no consumer reporting agency may make any consumer report containing any of the following items of information:

. . .

"(6) Any other adverse item of information which antedates the report by more than seven years.

"(b) The provisions of subsection (a) are not applicable in the case of any consumer credit report to be used in connection with—

"(1) a credit transaction involving, or which may reasonably be expected to involve a principal amount of $50,000 or more;

"(2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of $50,000 or more; or

"(3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal $20,000, or more.

. . .

"§ 609. Disclosures to consumers

"(a) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

"(1) The nature and substance of all information (except medical information) in its files on the consumer at the time of the request.

"(2) The sources of the information; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed: *Provided*, That in the event an action is brought under this title, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.

"(3) The recipients of any consumer report on the consumer which it has furnished

"(A) for employment purposes within the two year period preceding the request, and

"(B) for any other purpose within the six month period preceding the request.

"(b) The requirements of subsection (a) respecting the disclosure of sources of information and the recipients of consumer reports furnished prior to the effective date of this title except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

"§ 611. Procedure in case of disputed accuracy

"(d) Following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item has been deleted or the statement, codification or summary pursuant to subsection (b) or (c) to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months

prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information. The consumer reporting agency shall clearly and conspicuously disclose to the consumer his rights to make such a request. Such disclosure shall be made at or prior to the time the information is deleted or the consumer's statement regarding the disputed information is received.

"§ 618. Jurisdiction of courts; limitation of actions

"An action to enforce any liability created under this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this title to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this title, this action may be brought at any time within two years after discovery by the individual of the misrepresentation.

"Effective Date

"Sec. 602. Section 504 of the Consumer Credit Protection Act is amended by adding at the end thereof the following new subsection:

'(d) Title VI takes effect upon the expiration of one hundred and eighty days following the date of its enactment.'

Approved October 23, 1970."